**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE SOUTHERN DISTRICT OF OHIO**
**WESTERN DIVISION**

| | | |
|---|---|---|
| In re: | ) | Chapter 11 |
| MURRAY ENERGY HOLDINGS CO., *et al.*,[1] | ) | Case No. 19-56885 (JEH) |
| | ) | Judge John E. Hoffman |
| Debtors. | ) | (Joint Administration Requested) |

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO CONTINUE THEIR SURETY BOND PROGRAM AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the "Debtors") respectfully state as follows in support of this motion:[2]

## Relief Requested

1. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, (a) authorizing the Debtors to continue, renew, supplement, and discontinue their surety bond program on an uninterrupted basis, and (b) granting related relief. In addition, the Debtors request that the Court schedule a final

[1] Due to the large number of Debtors in these chapter 11 cases, for which joint administration has been requested, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. Such information may be obtained on the website of the Debtors' claims and noticing agent at https://cases.primeclerk.com/MurrayEnergy. The location of Debtor Murray Energy Holdings Co.'s principal place of business and the Debtors' service address in these chapter 11 cases is 46226 National Road, St. Clairsville, Ohio 43950.

[2] The facts and circumstances supporting this motion are set forth in the *Declaration of Robert D. Moore, President, Chief Executive Officer, and Chief Financial Officer of Murray Energy Holdings Co., in Support of Chapter 11 Petitions* (the "Moore Declaration") and the *Declaration of Robert A. Campagna, Managing Director at Alvarez & Marsal North America, LLC, in Support of First Day Motions* (the "Campagna Declaration"), filed contemporaneously herewith and incorporated by reference herein (collectively, the "First Day Declarations"). Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the First Day Declarations.

hearing with respect to the relief requested herein approximately 25 days from the Petition Date (as defined herein).

**Jurisdiction and Venue**

2. The United States Bankruptcy Court for the Southern District of Ohio (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *General Order 30-2* from the United States Bankruptcy Court for the Southern District of Ohio, dated October 10, 2019 (the "General Order"). The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), Bankruptcy Rule 6004, Rule 9013-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of Ohio (the "Local Rules"), and the General Order.

**Background**

5. Murray Energy Holdings Co. (together with its Debtor and non-debtor subsidiaries, "Murray"), is the largest privately-owned coal company in the United States, producing about 53 million tons of high quality bituminous coal in 2018, and employing nearly 5,500 people, including approximately 2,400 active union members.[3] Headquartered in

[3] These amounts exclude individuals employed through the Debtors' partnership with non-debtor affiliate Foresight Energy LP, but include employees at the operating companies of non-debtor subsidiary, Murray Metallurgical Coal Holdings, LLC.

St. Clairsville, Ohio, Murray owns and operates 13 active mines across the Northern, Central, and Southern Appalachia Basins (located in Ohio, West Virginia, eastern Kentucky, and Alabama), the Illinois Basin (located in Illinois and western Kentucky), the Uintah Basin (located in Utah), and Colombia, South America. Murray also manages and operates five additional mines in the Illinois Basin through its partnership with non-debtor Foresight Energy LP. Excluding Foresight-related operations, Murray's operations generated approximately $2.5 billion in revenue related to coal sales and $542.3 million of EBITDA in 2018. As of the date hereof (the "Petition Date"), the Debtors have approximately $2.7 billion in funded debt and over $8 billion in actual or potential legacy liability obligations under various pension and benefit plans.

6. On the Petition Date, each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue operating their business and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). Also on the Petition Date, the Debtors filed their Notice of Election of Complex Chapter 11 Cases.

**The Debtors' Surety Bond Program**

7. In the ordinary course of business, the Debtors are required by applicable federal and state laws and regulations to post bonds to certain government units or other public agencies (the "Surety Bond Program"). Such bonds secure the Debtors' performance or payment of certain obligations related to the Debtors' coal mining activities. More specifically, the Surety Bond Program includes, among others, (a) reclamation bonds and supplemental bonds, (b) long

term water treatment bonds, (c) road damage bonds, (d) encroachment bonds, and, (e) utility bonds, (f) subsidence bonds, (g) federal and state lease bonds, (h) employee related bonds, (i) litigation related bonds, and (j) transportation related bonds (each, a "Surety Bond," and collectively, the "Surety Bonds").

8. The Surety Bond Program is essential to the Debtors' operations. For instance, the federal Surface Mining Control and Reclamation Act (the "SMCRA"), 30 U.S.C. § 1201, *et seq.*, and/or applicable state statutes require the Debtors to post surety bonds to ensure funds are available to pay the Debtors' reclamation, subsidence, and related obligations. Without posting such bonds, the relevant government agency will not issue a permit allowing and/or authorize the Debtors to conduct their mining operations on a particular property. Without providing, maintaining, or timely replacing the Surety Bonds, the Debtors cannot operate their businesses.

9. As of the Petition Date, the Debtors have 521 Surety Bonds outstanding, which provide approximately $280 million in aggregate Surety Bond coverage. The Debtors have posted approximately $35 million in cash and other consideration to collateralize the Surety Bonds. Approximately 81 percent of the Surety Bond coverage secures reclamation obligations to governmental authorities related to the Debtors' mining operations. The Debtors' remaining Surety Bond coverage secures the Debtors' obligations related to water treatment and waterways, road damage, subsidence, encroachment on public lands or structures, and oil and gas well maintenance. A schedule of the Surety Bonds currently maintained by the Debtors is attached as **Exhibit C** attached hereto and is incorporated herein by reference.[4]

[4] The Debtors request authority, but not direction, to honor obligations and renew all Surety Bonds, as applicable, regardless of whether the Debtors inadvertently fail to include a particular Surety Bond on the attached schedule.

10. The issuance of a Surety Bond shifts the risk of the Debtors' nonperformance or nonpayment from the Debtors to a surety. Unlike an insurance policy, if a surety incurs a loss on a Surety Bond, it is entitled to recover the full amount of that loss from the principal. To that end, the Debtors are party to indemnity agreements with Argonaut Insurance Company ("Argo") and Indemnity National Insurance Company ("INIC," and together with Argo, the "Sureties"), which set forth the Sureties' rights to recover from the Debtors (together, the "Surety Indemnity Agreements"). Pursuant to the Surety Indemnity Agreements, the Debtors agree to indemnify the Sureties from any loss, cost, or expense that the Sureties may incur on account of the issuance of any bonds on behalf of the Debtors.

11. The Surety Indemnity Agreements allow the Sureties to request collateral security from the Debtors from time to time. Under the Surety Indemnity Agreements, the Debtors are either required to provide additional collateral at regular intervals or upon demand in response to assertion of liability against a Surety. As of the Petition Date, the Debtors are due to pay approximately $1,250,000 in additional collateral during the first 21 days of these chapter 11 cases.

12. Additionally, the Debtors pay premiums associated with each bond issued by the Sureties (the "Surety Premiums"). The annual Surety Premiums for the Debtors' Surety Bonds total approximately $7.1 million. The premiums for the Surety Bonds issued by INIC are paid quarterly, in advance, and the premiums for the Surety Bonds issued by Argo are determined on an annual basis and are paid by the Debtors when the bonds are issued and annually upon renewal (collectively, the "Surety Premiums"). As of the Petition Date, the Debtors estimate that there are approximately $230,000 in Surety Premiums which will become payable during the first 21 days of these chapter 11 cases.

13. To ensure uninterrupted coverage under the Surety Bond Program, the Debtors seek authority to pay such Surety Premiums and to honor their obligations under the Surety Indemnity Agreements in the ordinary course of business.

**The Surety Brokers**

14. The Debtors obtain a majority of their Surety Bonds through their brokers, The Reschini Group, INIC (as broker), and KEWA Financial (the "Surety Brokers"). The Surety Brokers assist the Debtors with obtaining the Surety Bonds and evaluating bond offerings. The Surety Brokers negotiate with the Sureties on behalf of the Debtors to procure surety bonds and enable the Debtors to obtain new or replacement surety bonds on favorable terms. The Debtors compensate the Surety Brokers by paying negotiated fees based on a percentage of the face amount of the bonds procured (the "Brokerage Fees"). The Brokerage Fees owed to The Reschini Group are remitted as a portion of the Surety Premiums, and Brokerage Fees owed to INIC and KEWA Financial are paid on a quarterly basis. As of the Petition Date, the Debtors believe that there is approximately $170,000 on account of the Brokerage Fees, none of which will come due in the first 21 days of these cases. Accordingly, to ensure uninterrupted coverage under the Surety Bond Program, the Debtors seek authority to honor any prepetition amounts owed in connection with the Brokerage Fees and to pay any Brokerage Fees that may arise on a postpetition basis in the ordinary course of business.

**Basis for Relief**

**I. The Surety Bond Program Is Maintained in the Ordinary Course of the Debtors' Businesses.**

15. The Bankruptcy Code authorizes the Debtors to continue their prepetition practices with respect to their Surety Bond Program, including all payments on account of the Surety Indemnity Agreements, Surety Premiums, and to Surety Brokers, as such practices are in

the ordinary course of the Debtors' business. Alternatively, to the extent any such practices fall outside of the ordinary course of business, the Court should authorize the Debtors to maintain, renew, or secure new Surety Bonds on a postpetition basis, as such relief is in the Debtors' sound business judgment and enables the Debtors to preserve value, consistent with the policies of chapter 11.

16. Section 363(c)(1) of the Bankruptcy Code provides that a chapter 11 debtor in possession "may enter into transactions . . . [or] may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The Bankruptcy Code does not define "ordinary course of business." *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992). In determining whether a transaction is in the ordinary course of business, courts have looked at whether a transaction is "common practice" in a debtor's industry and whether "a creditor could reasonably expect" the debtor to enter into such a transaction. *See In re Miller Min., Inc.*, 219 B.R. 219, 222 (Bankr. N.D. Ohio 1998) (applying a two-part "horizontal" and "vertical" test to analyze a postpetition payment); *Deaconess Hosp. LLC v. Nour Mgmn't Co.*, 2010 WL 1254307, at *2 n 9 (N.D. Ohio March 24, 2010) (same); *see also Roth Am.*, 975 F.2d at 952 (adopting a two-part "horizontal" dimension and "vertical" dimension test looking at industry practice and creditor expectations). ***First***, when determining "common practice," the court analyzes whether, from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry. *Miller Min.*, 219 B.R. at 223. ***Second***, the transaction must be analyzed on the "reasonable expectation" dimension, where the court "analyzes the transaction from the vantage point of a hypothetical creditor and inquires whether the transaction subjects a creditor to economic risks of a different nature from those he accepted when he initially contracted with the debtor." *Id.* at 222. "In other words, the vertical analysis

looks at the 'debtor's pre-petition business practices and conduct.'" *In re Blitz U.S.A., Inc.*, 475 B.R. 209, 214 (Bankr. D. Del. 2012) (quoting *In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 797 (Bankr. D. Del. 2007)); *see also In re WCI Steel Inc.*, 313 B.R. 414, 417 n.2 (Bankr. N.D. Ohio 2004) (observing that consistent past payments of pension obligations supported a finding that such payments were made in the ordinary course of business).

17. The Surety Bond Program is consistent with industry practice. Other coal mining businesses have sought court approval to continue their surety programs in order to remain in compliance with applicable federal and state laws that require the procurement surety bonds as part of the mine permitting process. *See, e.g.*, *In re Blackhawk Mining LLC*, No. 19-11595 (LSS) (Bankr. D. Del. Aug. 9, 2019) (authorizing the continuation of the debtors' surety program in the ordinary course); *In re Mission Coal Co., LLC*, No. 18-04177 (TOM) (Bankr. N.D. Ala. Nov. 21, 2018) (similar); *In re Westmoreland Coal Co.*, No. 18-35672 (DRJ) (Bankr. S.D. Tex. Nov. 15, 2018) (similar); *In re Peabody Energy Corp.*, No. 16-42529 (BSS) (Bankr. E.D. Mo. May 18, 2016) (similar); *In re Arch Coal, Inc.*, No. 16-40120 (CER) (Bankr. E.D. Mo. Jan. 14, 2016) (similar). In other words, the existence and continuation of the Surety Bond Program is required by law and therefore common in the mining industry.

18. The Surety Bond Program also has been a part of the Debtors' business since its outset (and their creditors either should or do know this fact) and is necessary for the Debtors to engage in coal production and domestic and international sales operations. Indeed, maintenance of the Debtors' Surety Bond Program and honoring the Debtors' obligations under the Surety Indemnity Agreements is required by statute or regulation for the Debtors to perform work or obtain the necessary licenses to operate their businesses. *See* SMCRA, 30 U.S.C. §§ 1259–1260.

19. Here, the Debtors seek only to continue their existing Surety Bond Program and to honor their obligations under the Surety Bond Program in the ordinary course of business on a postpetition basis. Such obligations include, among other things, maintaining existing Surety Bonds, renewing the Surety Bonds as they expire, paying applicable Surety Premiums, and honoring any indemnity obligations to the extent they arise. Accordingly, the Debtors believe that the continuation of the Surety Bond Program on a postpetition basis is in the ordinary course of business.

20. Out of an abundance of caution, to the extent that the Debtors' continuation of the Surety Bond Program is outside of the ordinary course of business, section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that a debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A court may authorize non-ordinary course transactions using property of the estate pursuant to section 363(b) "when a sound business purpose dictates such action." *Stephens Indus. Inc. v. McClung*, 789 F. 2d 386, 390 (6th Cir. 1986) (approving a sale of assets pursuant to section 363(b)); *see also In re Eagle-Picher Holdings, Inc.*, No. 05-12601, 2005 WL 4030132, at *5 (Bankr. S.D. Ohio Aug. 26, 2005) (authorizing the debtors to implement a key employee retention plan pursuant to section 363(b) after finding the use was an "exercise of sound business judgment"). Moreover, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) ("Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.").

21. Thus, if a debtor's actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b) of the Bankruptcy Code. Indeed, when applying the "business judgment" standard, courts show great deference to a debtor's business decisions. *See Granada Invs., Inc. v. DWG Corp.*, 823 F. Supp. 448, 454 (N.D. Ohio 1993) (observing that "courts employ the business judgment rule because in order for a corporation to be managed properly and efficiently, latitude must be given in the handling of corporate affairs") (internal quotation omitted); *see also Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) ("Courts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence.") (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

22. As noted above, certain surety bonds are required by statute and, in other instances, surety bonds may be required by contract or regulation. The Debtors' failure to provide, maintain, or timely replace the Surety Bonds may, therefore, jeopardize the Debtors' ability to conduct their operations. Moreover, based on the Debtors' current circumstances, it is not likely that the Debtors will be able to replace existing Surety Bonds on terms more favorable than those offered by the Sureties. The process of establishing a new Surety Bond Program would be burdensome to the Debtors, and it is doubtful that the Debtors could replace all of the Surety Bonds in time to avoid defaults or other consequences of the applicable obligations. Continuing the Surety Bond Program is therefore necessary to maintain the Debtors' current business operations, as well as the existing relationship with the Sureties. In short, failure to maintain the Surety Bond Program would have a detrimental impact on the Debtors' businesses and the value of their estates. Accordingly, the Debtors submit that the requirements of section 363(b) of the Bankruptcy Code are satisfied.

## II. The Debtors Should Be Authorized to Pay All Prepetition Obligations Owed under the Surety Bond Program.

23. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including an operating business's going-concern value. *See, e.g.*, *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991); *In re Just for Feet, Inc.*, 242 B.R. 821, 825–26 (D. Del. 1999); *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175–76 (Bankr. S.D.N.Y. 1989); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims.

24. Section 363(b) of the Bankruptcy Code permits a bankruptcy court, after notice and a hearing, to authorize a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A court may authorize non-ordinary course transactions using property of the estate pursuant to section 363(b) "when a sound business purpose dictates such action." *Stephens Indus.*, 789 F. 2d at 390. Courts have authorized payment of certain prepetition claims pursuant to section 363(b) where there is a sound business purpose for doing so. *See, e.g.*, *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (collecting cases); *James A. Phillips*, 29 B.R. at 397 (relying on section 363 to allow contractor to pay prepetition claims of suppliers who were potential lien claimants because the payments were necessary for general contractors to release funds owed to debtors); *Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to justify payment of certain prepetition wages).

25. Courts also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code codifies a bankruptcy court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Under section 105(a), courts may authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's businesses. *See Eagle-Picher Indus.*, 124 B.R. at 1023 (authorizing payment of prepetition indebtedness where the "payment is necessary to avert a serious threat to the Chapter 11"); *Just for Feet*, 242 B.R. at 825−26. Specifically, a court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity"). *See, e.g.*, *Ionosphere Clubs*, 98 B.R. at 176; *In re Lehigh & New England Railway Co.*, 657 F.2d 570 (3d Cir. 1981) (stating that courts may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *see also In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) ("A general practice has developed however, where bankruptcy courts permit the payment of certain pre-petition claims pursuant to 11 U.S.C. §105, where the debtor will be unable to reorganize without payment."). A bankruptcy court's use of its equitable powers to "authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *Ionosphere Clubs*, 98 B.R. at 175–76 (citing *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286 (1882)). Indeed, at least one court has recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the preplan satisfaction of a prepetition claim." *CoServ*, 273 B.R. at 497.

26. As described above, the Surety Bond Program is absolutely necessary to the continuation of the Debtors mining operations. Accordingly, the Debtors respectfully submit that their participation in the Surety Bond Program, including honoring any prepetition obligations related thereto (including performance under the Surety Indemnity Agreements) should be authorized under sections 105(a) and 363(b) of the Bankruptcy Code to the extent such participation is deemed outside the ordinary course of the Debtors' businesses.

## III. Continuing the Surety Bond Program May Be Authorized Under Section 364(c) of the Bankruptcy Code.

27. Under section 364(c) of the Bankruptcy Code, a debtor may obtain secured credit (a) with priority over administrative expenses, (b) secured by a lien on unencumbered estate assets, or (c) secured by a junior lien on previously encumbered assets. 11 U.S.C. § 364(c). To satisfy the requirements of section 364(c) of the Bankruptcy Code, a debtor need only demonstrate "by a good faith effort that credit was not available" to the debtor on an unsecured or administrative expense basis. *Bray v. Shenandoah Fed. Savs. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). Given the Debtors' current financial circumstances, the Debtors likely would not be able to obtain financial accommodations comparable to those offered by the Sureties on an unsecured basis or administrative expense basis. To the extent a surety bond is deemed an extension of credit, section 364 of the Bankruptcy Code provides the Debtors ample authority to renew existing surety bonds, procure new ones, whether on an unsecured basis or, if necessary, on a secured basis.

28. Continuing the Surety Bond Program, including paying outstanding prepetition amounts, is necessary to maintain the Debtors' current business operations. As described above, the Debtors are required to provide surety bonds or other forms of credit support to certain third parties, often governmental units or other public agencies, to secure the payment or performance

of certain obligations. Failure to provide, maintain, or timely replace the surety bonds would jeopardize the Debtors' ability to operate their business. The Debtors therefore seek authority to pay prepetition amounts and furnish Sureties with collateral with respect to existing surety bonds, renewals, or new forms of credit support.

**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

29. The Debtors expect to have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations, debtor-in-possession financing, and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to any authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion; *provided* that sufficient funds are on deposit and standing in the Debtors' credit in the applicable bank accounts to cover such payments.

**The Requirements of Bankruptcy Rule 6003 Are Satisfied**

30. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." For the reasons discussed above, the Debtors believe an immediate and orderly transition into chapter 11 is critical to the viability of their operations and that any delay in granting the relief requested could hinder the Debtors' operations and cause irreparable harm. Furthermore,

the failure to receive the requested relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this important juncture. For the reasons discussed herein, the relief requested is necessary for the Debtors to operate their businesses in the ordinary course and preserve the ongoing value of the Debtors' operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

**Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

31. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**Motion Practice**

32. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this motion. Accordingly, the Debtors submit that this motion satisfies Local Rule 9013-1(a).

**Reservation of Rights**

33. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion or any order granting the relief requested by this motion or any order granting the relief requested by this motion or a finding

that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

**Notice**

34. The Debtors have provided notice of this motion to the following parties or their respective counsel: (a) the U.S. Trustee for the Southern District of Ohio; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the indenture trustee under the Debtors' prepetition indentures; (d) the administrative agent under the Debtors' prepetition asset-based and term loan facilities; (e) the administrative agent under the Debtors' proposed debtor-in-possession financing facility; (f) counsel to the Ad Hoc Group of Superpriority Lenders; (g) the Environmental Protection Agency and similar state environmental agencies for states in which the Debtors operate; (h) the office of the attorneys general for the states in which the Debtors operate; (i) the United States Attorney's Office for the Southern

District of Ohio; (j) the Internal Revenue Service; (k) the Sureties; (l) the Surety Brokers; (m) the Pension Benefit Guaranty Corporation; (n) the United Mine Workers of America; (o) the Seafarers International Union; and (p) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

35. No prior request for the relief sought in this motion has been made to this or any other court.

[*Remainder of page intentionally left blank*]

WHEREFORE, the Debtors respectfully request that the Court enter interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: October 29, 2019
Cincinnati, Ohio

/s/ *Kim Martin Lewis*

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